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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. AARON ANDERSON, Defendant and Appellant.	C058629 (Super. Ct. No. 07F01701)

A jury found defendant Aaron Anderson guilty of the felonies of inflicting injury on a cohabitant, assaulting the cohabitant by means of force likely to inflict great bodily injury, and vandalism of police property, but was unable to reach a verdict on a further charge of resisting a peace officer. The court declared a mistrial as to the latter. The jury then sustained various recidivist allegations. The court sentenced defendant to concurrent life sentences for the two crimes against the cohabitant victim, with a consecutive life term for the vandalism (along with related recidivist enhancements).

On appeal, defendant contends court and counsel disregarded substantial evidence of his incompetence to stand trial, which was at least sufficient to require the court to deny his motion to represent himself. He also argues his shackling at trial was not justified and was prejudicial, the trial court erred in imposing sentence on both crimes against the cohabitant victim because they were part of an undivided course of conduct, and the court in its rendition of judgment identified the wrong victim in the restitution order. The People concede the latter. We accept the concession, and will otherwise affirm the judgment with directions to prepare an amended abstract of decision.

FACTS AND PROCEEDINGS

The facts underlying the convictions are largely irrelevant to the issues on appeal, but we include them for the purpose of showing the absence of any possible prejudice. In a nutshell, defendant and the victim had been living together on and off since 2004, but in February 2007 he was not living with her. They attended the wake of defendant's nephew, which left him extremely distraught. The victim drove defendant and his brother to a supermarket near her home to drop them off before going to tend to her ill mother. The brother had gone into the store when defendant and the victim began to quarrel over her failure to join them for a drink. He hit her behind her right ear and grabbed the car keys, heading for the store. As she followed him toward the store, he struck her again, knocking her down.

Their quarrel continued inside the store. The victim requested the use of the manager's phone to call 911. After she made the call, defendant tried to grab the phone out of her hand. He put his arm around her neck and dragged her backward about 15 feet before throwing her to the ground.

The victim began to drive off, but defendant was able to get back in the car before she left the parking lot. She drove to the nearby home of defendant's grandmother where the police intercepted them. Defendant, smelling strongly of alcohol, told the police he could not go to jail because his nephew had just died. When the police put him into the patrol car, he kicked out a window. (In light of the mistrial, we omit a description of defendant's struggles with the police as they took him into custody.) The victim had a two- by one-inch "painful" contusion behind the ear, bruises, and a lump on her head.

Defendant testified. He claimed he was not cohabiting with the victim at the time of the assaults, but admitted being an intermittent bed companion. He accused the victim of starting the fight in the car by scratching his neck. He grabbed her in an unsuccessful attempt to keep her from getting out of the car, then followed her and pushed her to the ground because he was angry about the scratch. When he followed her into the store, he pushed her away from the counter to keep her from calling the police. He otherwise did not kick or strike her. When cross-examined about the surveillance video from the supermarket, defendant admitted the video did not show the victim attacking defendant in the car; it showed him on top of her in the car

drawing his hand back several times; it showed him standing above her as she lay on the ground outside the market, moving his arms and legs; and it showed him swinging his arms as he stood over her in the store after shoving her to the ground.

DISCUSSION

I

Defendant's Competence to Stand Trial

In order to be subject to trial, due process requires a defendant to have a rational understanding of the nature of the proceedings against him and the ability to consult effectively with counsel in preparing the defense. (*Indiana v. Edwards* (2008) 554 U.S. ____ [171 L.Ed.2d 345, 352] (*Edwards*).) A trial court must suspend proceedings and conduct a competency hearing whenever there is "substantial evidence of incompetence, that is, evidence that raises a reasonable . . . doubt" as to a defendant's competence to stand trial. (*People v. Rogers* (2006) 39 Cal.4th 826, 847.) Given a trial court's ability to observe a defendant, the court is entitled to deference in deciding whether the circumstances called for a competency hearing, but the failure to hold a hearing in the presence of substantial evidence of incompetence requires reversal of the judgment. (*Ibid.*) In the same vein, the failure of defense counsel to seek a competency hearing is not determinative but is significant. (*Id.* at p. 848.) Suicide attempts or ideation "*in combination with other factors*" can be substantial evidence of incompetence. (*Ibid.*, italics added.) Presenting a list of

facts on appeal unrelated to a defendant's understanding of the proceedings or ability to assist counsel is inadequate; "a defendant must exhibit more than bizarre, paranoid behavior[or] strange words . . . ." (*People v. Ramos* (2004) 34 Cal.4th 494, 508.)

Throughout the proceedings, defendant demonstrated extreme emotional strain from the prospect of the lengthy indeterminate life sentence he faced. In the original trial proceedings in October 2007, counsel indicated at the outset that relations with his client were rocky but repairable. On the following day, defendant refused to come to court. Defense counsel reported that "I don't think I can raise things to the level of a doubt to his competency. But I do have some concerns" about defendant not presently taking the anti-depressants previously prescribed for him while in jail, because he was somewhat suicidal. The prosecutor noted there were indications in the jail record of previous suicide attempts, though not whether they were feigned or not. Defense counsel thought defendant was preoccupied and that preoccupation was interfering in their interaction, which might raise a doubt of competence if it worsened. For this reason, he asked for a short continuance to get an evaluation of defendant from professionals with whom he was familiar and who could work quickly. The court and the prosecutor both adverted to defendant's "difficult" personality and high stress level, and the need to avoid giving him any indication that being difficult would result in any delay of the proceedings.

However, defendant appeared in court in the afternoon in jail attire. He asserted that he did not want to be there, that he was not mentally prepared, and he did not understand what was happening. He said that he had stopped taking his medication, and thought the strain of the proceedings might leave him unable to be present throughout them. He also had been having trouble eating and sleeping. The court observed that defendant had become emotional in the discussion of whether the court might strike one of his recidivist allegations, and believed that defendant was simply experiencing the ordinary stress of facing trial (rather than facing an incipient mental breakdown). It therefore intended to proceed with voir dire, and stated "[f]or the record, there is nothing that I can find from my interaction and my observation of Mr. Anderson that would in any[ ]way . . . indicate that he doesn't know what was going on . . . either today or in the prior proceedings . . . ." As related more fully in part III, after the court then stated that it could not find any basis for restraints, defendant insisted on wearing them during the beginning of voir dire.

On the next trial date, the court announced that it was continuing the proceedings in order to evaluate defendant because he had attempted suicide over the weekend. With the concurrence of defense counsel, the court dismissed the jury panel for good cause.

The court granted a number of additional continuances. Defense counsel informed the court in camera at one of these hearings that he intended to have his outside experts conduct a

psychological evaluation of defendant, and he would take whatever course the confidential report indicated.

The case eventually came on for trial in a new department. Defendant requested a substitution of appointed counsel. After hearing lengthy complaints about inadequate investigation of the facts (and inadequacy of his previous representation) and inadequate contact, and the admission from defense counsel of a heated exchange between them on the first day of the original trial regarding defense counsel's commitment to the case, the court denied the motion. Defendant then said that he wanted to represent himself.

Back on the record, the court told him that the case was proceeding to trial with or without defense counsel. Defendant again asserted his intent to waive his right to counsel. He explained that he felt the outcome of the trial was inevitable and he would rather reach that result on his own than with someone else representing him, and asserted the unfairness of going to prison for life and losing everything else important to him for "push[ing] my girl down," whom he had not intended to hurt. When the court could not get defendant to express his understanding that self-representation precluded an appeal based on his inadequate performance at trial, it refused to accept the waiver before going on to other matters (querying in the course of discussion whether there would be a need to revisit these other matters if defendant waived his right to counsel). Following the lunch recess, the court told defendant it would accept his waiver notwithstanding his refusal to acknowledge

that he could not raise the incompetence of his own trial performance on appeal.

Defendant did not participate meaningfully in the voir dire and selection of jurors on the following day. At the start of trial on the second day, the court let defendant know that defense counsel was standing by; defendant did not reply and sat with his head hanging down until the court called the first witness to the stand, at which point he blurted out that he felt "overwhelmed" and asked to be excused. When it came time for him to cross-examine a police officer who responded to the victim's 911 call, he simply asked whether the officer knew that he was facing a life term, and then admitted he did not know how to cross-examine (at which point the court excused the witness). The court called a recess.

Defendant confessed he was legally inadequate, and was feeling an extreme amount of stress. The court again reminded him of the availability of counsel. Although neither the court nor the prosecutor believed defendant was entitled to a continuance, the court recessed the trial until the following Monday to allow defendant time for whatever preparation he could undertake.

When the trial reconvened, defendant continued to complain that his inability to try the case resulted in an unfair trial. He was silent during the examination of a witness testifying about the damage to the police vehicle and did not respond when asked if he wanted to cross-examine. During the direct examination of the victim, he repeatedly interrupted the

questioning. (As defendant does not cite to more than one of these instances in his appellate brief, we will not detail them.) According to defendant's own summary of his cross-examination of the victim, "he called her names and pleaded with her."

When the court called the noon recess, defendant had an emotional outburst (apparently directed at the prosecutor) and asked to rescind his waiver of counsel. He also demanded a mistrial. After the recess, defendant apologized for his behavior and again requested a mistrial. At the conclusion of the afternoon's proceedings, the court granted defendant's request to revoke his waiver of counsel and reappointed defense counsel.

Defendant sets forth the following as constituting the substantial evidence of his incompetence to stand trial: the unquestioned evidence of his emotional strain in facing an all-but-inevitable life term without parole (being 42 at the time of sentencing to a 50-year minimum indeterminate sentence), leading to his genuine suicide attempt on the eve of the initial proceedings in this matter; his failure to take any action in his own defense when proceeding in propria persona at the renewed proceedings during voir dire and the examination of the first two police witnesses; and his emotional outbursts during the prosecutor's examination of the victim and his own cross-examination. He acknowledges his trial counsel's failure to express a doubt, but simply relies on the fact that this is not determinative.

Defendant's failure to take action in his own defense at trial does not show anything more than the expected reaction of an unprepared layperson thrust into the complexities of the ill-advised role of self-representation. His suicide attempt or attempts are not sufficient of themselves to give substantial evidence of an inability to understand the proceedings or assist trial counsel meaningfully, as we have noted above. Defendant's emotional distress, far from being substantial evidence of his incompetence, demonstrates he knew far too well what was at stake, including his accurate assessment of the likelihood of his convictions. His outrage at the victim is also rational. While trial counsel at one point was concerned that the level of defendant's emotional preoccupation with the outcome might make him unable to interact meaningfully with counsel, he expressed the intention to seek a confidential evaluation of defendant's mental condition and thereafter did not say anything more on the subject. We will not speculate on appeal either that counsel did not carry out his expressed intention or that he disregarded evidence in this evaluation of incompetence. While this absence of doubt on the part of counsel is not determinative, nothing else in the record suggests a lapse on counsel's part, and the two trial judges were equally convinced that nothing they saw in court gave *any* doubt of defendant's understanding of the proceedings or of his ability to assist counsel. We therefore reject this claim.

II

Waiver of the Right to Counsel

Under what defendant admits is a controlling principle of California law, a defendant competent to stand trial is also competent to waive his right to counsel, and therefore a court *cannot* require a higher standard of competence to accept the waiver. (*People v. Welch* (1999) 20 Cal.4th 701, 732 [citing *Godinez v. Moran* (1993) 509 U.S. 389, 400-401 (*Godinez*)].)

More recently, *Edwards*, *supra*, 554 U.S. ____ [171 L.Ed.2d 345], held that for a defendant seeking to waive the right to counsel *in order to litigate* with a mental condition falling in the "gray area" exceeding the minimal constitutional standard to stand trial (*id.* at p. ____ [171 L.Ed.2d at p. 354]), a trial court *may* refuse to accept the waiver on the ground that the mental condition interferes with the defendant's "capacity to conduct [a] trial defense unless represented." (*Id.* at p. ____ [171 L.Ed.2d at p. 355].) It distinguished *Godinez* as involving a defendant competent to stand trial who sought to waive counsel only to enter a guilty plea. (*Id.* at p. ____ [171 L.Ed.2d at p. 354].) *Edwards* believed the precedent involving competency to stand trial and the right to waive counsel presupposed the existence of an effective advocate (either in the person of counsel or defendant). (*Id.* at p. ____ [171 L.Ed.2d at pp. 355-356].) In short, a court may "insist upon representation by counsel for those competent enough to stand trial . . . but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves."

(*Id.* at p. ____ [171 L.Ed.2d at p. 357].) This ruling postdates the trial in this matter by several months. Nonetheless, defendant asserts the trial court abused a discretion it did not know it possessed when it allowed him to waive counsel for the early part of his trial.

Our Supreme Court's "independent constitutional obligation to interpret" federal law (*In re Tyrell J.* (1994) 8 Cal.4th 68, 79) is restricted only by a decision of the federal high court that directly decides an issue to the contrary or "the premise from which it necessarily follows" (*People v. Whitfield* (1996) 46 Cal.App.4th 947, 957). In the absence of any such paramount authority we must follow the rulings of the California Supreme Court. (*Auto Equity Sales, Inc.* v. *Superior Court* (1962) 57 Cal.2d 450, 455; *People v. Dunn* (1995) 40 Cal.App.4th 1039, 1050; *People v. Rooney* (1985) 175 Cal.App.3d 634, 644.)

Edwards, as a matter of *federal* law, now *permits* a court to restrict a mentally challenged defendant's right to waive counsel. It does not, however, *compel* a court to restrict the right to waive counsel. Nor, for that matter, does it change the prohibition under *state law* from interfering with a defendant's absolute right to proceed to trial without counsel if competent to stand trial. We are therefore without the power to apply *Edwards* to the present case. Having raised the issue in this court, defendant is free to persuade the California Supreme Court to adopt the rule as a matter of state law.

III

Physical Restraints

At the start of voir dire in the first proceeding in this matter, the court questioned its bailiff about the manifest necessity for the restraints on defendant's person. The court concluded it did not find any basis for any restraints. Defendant, however, said he wanted the belly chains and shackles. Understandably nonplussed at the request, the court allowed him to remain in restraints, but ordered the unshackling of his feet.

At the start of the renewed proceedings, the bailiff asked the court just before the lunch recess to address the question of restraints, indicating that counsel wanted them removed but "it doesn't make any difference to defendant whether or not he had restraints on" (which we assume was a reference to the last time the court addressed the issue). Now, however, defendant asserted that he did not pose any threat and voiced objection to the full restraints that the deputies wanted as a matter of course. Obtaining defendant's assurances that he would behave respectfully while in the courtroom (*People v. Watts* (2009) 173 Cal.App.4th 621, 629-630), the court ruled that defendant did not need any restraints other than being chained to the chair. Defendant expressed his satisfaction with this arrangement.

At one point during the direct examination of a witness, defendant (in the midst of his other outbursts) twice told the court that the chair chain was too tight. The record does not

indicate whether or not there was an adjustment of the chain in front of the jury.

In its instructions, the court included the following admonition: "The fact that physical restraints have been placed on Aaron Anderson is not evidence. Do not speculate about the reason, and you must completely disregard this circumstance in deciding the issues in this case. Do not consider it for any purpose or discuss it during your deliberations."

A defendant is subject to physical restraint only upon a finding of manifest need based on affirmative facts. (*People v. Vance* (2006) 141 Cal.App.4th 1104, 1112.) Defendant argues that there was neither any express finding, nor were there facts that would have supported even an implied finding.

As the facts we have recited indicate, defendant (and counsel, to the extent he was still representing defendant at this point) assented to the trial court's imposition of minimal restraints. The objection had been to *full* restraints. We do not discern mere acquiescence, as he argues in his reply brief. The record as a whole demonstrates that defendant was quite capable of expressing his dissatisfaction when he desired to do so. He has thus waived the issue of the imposition of the minimal restraints. (*People v. Tuilaepa* (1992) 4 Cal.4th 569, 583 (*Tuilaepa*).) To the extent he called the attention of the jury to his restraints, it is invited error.

In any event, even if waiver and invited error do not bar the issue on appeal, the presence of the minimal restraints is harmless beyond a reasonable doubt. Absent a situation in which

the credibility of a heavily shackled defendant plays a critical role in a close case, brief observations of restraints do not warrant reversal. (*Tuilaepa*, *supra*, 4 Cal.4th at p. 584; compare *People v. Duran* (1976) 16 Cal.3d 282, 287, fn.2, 295-296; *People v. Soukomlane* (2008) 162 Cal.App.4th 214, 232-233 *People v. McDaniel* (2008) 159 Cal.App.4th 736, 740-741, 746 [all involving close cases in which credibility of shackled defendant critical to defense].) Defendant's protests on appeal to the contrary, this was not remotely a close case. The jury was already aware of his undisputed outbursts of rage against the victim and the police. The videotape made a mockery of his credibility. The record indicates only a passing reference to the *existence* of restraints, and nothing affirmatively indicates that the jury actually saw the chair chain, nor does anything indicate that defendant testified in a chair restraint. The extent of the victim's injuries, which spoke for themselves, was the only real issue. Under these circumstances, we may presume the admonition was effective, and therefore the employment of a minimal restraint did not have any prejudicial effect even if the restraint was ordered in error.

IV

Penal Code Section 654

When this matter first came to trial in October 2007, the court allowed the prosecution to amend the information to add "a count of a [section] 273.5(a) of the Penal Code, which is basically an alternative statement to the count that they charged previously, which was the [section] 245(a)(1)

involv[ing] the same victim." Nothing in the instructions or argument assigned any one act to either count (presumably because there was a continuous course of conduct (*People v. Thompson* (1984) 160 Cal.App.3d 220, 224-225)), the prosecution simply noting that either the bump or the victim's soreness were corporal injuries, and the punch and the push to the ground were with force likely to cause great bodily injury. The probation report recommended staying the assault conviction because the two offenses made up an indivisible transaction, a recommendation that trial counsel urged the trial court to follow. As noted above, the court imposed concurrent sentences, but did not elaborate on its reasoning.

Penal Code section 654 precludes multiple punishments where an act or course of conduct violates more than one criminal statute but a defendant has only a single intent and objective. (See *People v. Bellacosa* (2007) 147 Cal.App.4th 868, 875, fn.2.) However, a defendant harboring multiple objectives in a single course of conduct may receive multiple punishments. (*People v. Blake* (1998) 68 Cal.App.4th 509, 512.) We review a trial court's express or implied finding on the issue for substantial evidence. (*Ibid.*)

Defendant contends that, as in *People v. Siko* (1988) 45 Cal.3d 820, 826, the People should not be allowed to assign multiple objectives to the distinct acts of violence in his course of conduct against the victim because "[t]here is no showing that [they were] understood in this fashion at trial." (*Ibid.*) However, in that case, the jury's verdicts expressly

reflected that the convictions for generic child molestation had their basis in the *same acts* underlying the convictions for sodomy and rape, foreclosing the People from seeking to identify other acts as the basis for the generic molestation convictions. (*Ibid.*) The issue of simultaneous multiple objectives in a course of conduct was not present.

In contrast, the case at bar does not have any equivalent express determination of defendant's objectives in each of the offenses, nor is there anything requiring the trial court in assessing the evidence at trial to agree with the probation report's opinion (which may not have been aware of defendant's admission to a different objective in the store). Absent his claim of estoppel, defendant cannot dispute the substantial evidence for an implicit finding that the initial attack on his cohabitant grew out of drunken pique at her lack of sufficient sympathy for his loss, while the attack inside the store was to prevent her from completing her call to 911. We thus reject defendant's argument.

V

The Restitution Order

The probation report identified the police department as a victim, in that the patrol car had $661.82 in damages. It set the cohabitant's damages as zero because she did not respond to inquiries. In its sentencing recommendations, the report identified $661.82 in restitution to an unidentified victim. In rendering judgment, the court presumably interpreted this as referring to the cohabitant and ordered defendant to pay her

this amount. The abstract of decision reflects this order. The People concede this error that defendant has identified. We will direct the trial court to correct it.

DISPOSITION

The judgment is affirmed. The trial court is directed to amend the abstract of decision, item 9(c), to reflect that the order for restitution is on behalf of the Sacramento Police Department, and forward it to the Department of Corrections and Rehabilitation.

HULL, Acting P. J.

We concur:

ROBIE, J.

BUTZ, J.